

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SCOTT ALAN THATCHER,

Petitioner,

v.

JERI-ANN SHERRY,

Respondent.

Case No. 2:04-CV-152

Hon. Richard Alan Enslen

ORDER

Petitioner Scott Alan Thatcher has appealed United States Magistrate Judge Timothy P. Greeley's Order of May 18, 2005 denying discovery. Pursuant to 28 U.S.C. § 636(b)(1)(A), the review of a magistrate judge's pretrial orders is limited to whether the orders are "clearly erroneous or contrary to law." *See United States v. Raddatz*, 447 U.S. 667, 673 (1980); *Flournoy v. Marshall*, 842 F.2d 875, 876-77 (6th Cir. 1988). This standard does not permit reversal unless the reviewing court is left with the definite and firm conviction that an error has been made. *See United States v. Kellams*, 26 F.3d 646, 648 (6th Cir. 1994); *Chakales v. Comm'r of Internal Revenue*, 79 F.3d 726, 728 (8th Cir. 1996).

Upon review, the Court finds the Order in question to be proper and not clearly erroneous. Discovery under Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts is discretionary upon a showing of good cause. *See* Rule 6(a). The tradition of such discovery is to permit it "follow[ing] the granting of an evidentiary hearing" Rule 6, advisory comm. notes to 1976 adoption. While pre-hearing discovery may be permitted, *see Harris v. Nelson*, 394 U.S. 286, 300 (1969), such discovery remains the exception rather than the rule, particularly

since a pre-hearing discovery order typically involves the pre-hearing appointment of counsel which, otherwise, would not be done until the time of an evidentiary hearing. *See* Rules 6(a) & 8(c). In this case, the Magistrate Judge has decided that any discovery order should be made after his plenary review of the adequacy of the state court record and findings under section 2254(e). This kind of order is certainly within the Magistrate Judge's discretion and he should be given an ample opportunity to analyze the record before making any later discovery orders, if such be necessary.

THEREFORE, IT IS HEREBY ORDERED that Petitioner Scott Alan Thatcher's appeal (Dkt. No. 42) is **DENIED** and the Order of May 18, 2005 (Dkt. No. 41) is **AFFIRMED**.

DATED in Kalamazoo, MI:
June 3, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE